

TAKE-1

GUIDELINES FOR ARMY REGULATION 608-99

1. Q. WHAT IS AR 608-99?

A. Army Regulation 608-99, effective 17 December 2003, explains the Department of the Army's policy, guidance and procedures concerning nonsupport of family members, paternity claims, and paternity-related adoption proceedings. A summary is provided in this "TAKE-1".

2. Q. WHAT IS A SOLDIER'S OBLIGATION UNDER THE REGULATION?

A. A soldier's obligation includes:

- a) Providing adequate and continuous support for family members.
- b) Complying with separation agreements, court orders and judicial orders or decrees.
- c) Meeting financial obligations promptly.

3. Q. WHO IS RESPONSIBLE FOR ENSURING THAT SOLDIERS ARE INFORMED OF THE ARMY POLICY ON SUPPORT OF FAMILY MEMBERS AND ENFORCING IT?

A. Commanders are responsible for ensuring that soldiers know about the policy and comply with it.

4. Q. IF A SOLDIER FAILS TO MEET THE REQUIREMENTS ABOVE, WHAT CAN THE COMMANDER DO?

A. The commander can consider:

- a) Making it a part of the soldier's permanent record.
- b) Denial of reenlistment.
- c) Punitive or other administrative action including elimination from the service.
- d) A criminal charge under the Uniform Code of Military Justice (UCMJ).

5. Q. IF THE SOLDIER FAILS TO MEET THE REQUIREMENTS, CAN THE ARMY DEDUCT MONEY FROM THE SOLDIER'S PAY?

A. No. The Army has no legal authority to deduct money from a soldier's pay without his consent unless garnishment or involuntary allotment has been ordered by a civilian court.

6. Q. HOW DOES THE COMMANDER DETERMINE ADEQUATE SUPPORT FOR FAMILY MEMBERS?

A. The Army will require that soldiers comply with any court-ordered support. In the absence of a court order, the Army prefers that a separated soldier and spouse enter into a written separation agreement that specifies an agreed-upon level of support.

7. Q. IN THE ABSENCE OF A COURT ORDER OR AGREEMENT, HOW IS ADEQUATE SUPPORT FOR FAMILY MEMBERS DETERMINED?

A. In the absence of a court order or written agreement, and until such an order or agreement is obtained, the Army has established minimum interim support measures for single and multiple family units. This support is payable on the 1st of every month for the previous month. This support must also be pro-rated if the soldier is required to pay support for a partial month. The payment should be made by allotment or direct deposit to ensure it is paid in a timely manner, but it may also be paid by money order or check. Any such money order or check that is mailed must be mailed directly to the recipient and must be post-marked no later than the 1st of the month.

8. Q. IF I AM THE SPOUSE OF A SOLDIER IN A SINGLE FAMILY UNIT [HUSBAND AND WIFE/HUSBAND, WIFE, AND CHILD(REN)] AND LIVING OFF POST, WHAT IS THE MINIMUM SUPPORT THAT I CAN RECEIVE?

A. The soldier will provide support of an amount equal to his/her Basic Allowance for Housing (BAH) entitlements at the "with dependents" rate. This rate is the BAH-II rate, which is a standard rate the Army determines regardless of where the soldier resides. A current BAH-II rate list is attached to this information paper.

9. Q. WHAT IS THE MINIMUM AMOUNT OF SUPPORT THAT I CAN RECEIVE IF WE LIVE ON POST IN GOVERNMENT HOUSING?

A. In the absence of a court order, AR 608-99 does not require support to be paid if the family is still in on-post government quarters. This is a change from the prior regulation. Outside of the family support arena, however, if the soldier has debts or other financial obligations for which he is responsible, the Army expects him to uphold those obligations.

10. Q. WHAT HAPPENS IF THE SUPPORTED FAMILY MEMBERS MOVE OFF POST?

A. When the supported family members move off post, support will be provided in an amount equal to BAH-II at the "with dependents" rate. This is true even if the quarters were not properly cleared and even if the soldier is not receiving BAH from finance.

11. Q. IF THE SOLDIER'S RANK INCREASES AND IT RESULTS IN AN INCREASED AMOUNT FOR BAH, WILL I RECEIVE AN INCREASE IN SUPPORT?

A. Yes. If the BAH entitlements increase so should your payments as long as the soldier has not remarried or become duly obligated to support another family member.

12. Q. WHEN A SOLDIER HAS SEPARATED AND REMARRIED AND HAS TO SUPPORT MULTIPLE FAMILY UNITS (2 FAMILIES OR SETS OF DEPENDENTS) THAT LIVE OFF POST, HOW IS THE AMOUNT OF SUPPORT DETERMINED?

A. In multiple support situations, the amount of support due to each supported family member is determined as follows:

$$\text{Amount of Support} = \frac{\# \text{ of Support Family members} \times \text{Applicable BAH II-WITH Rate}}{\text{Total Number of Supported Family Members}}$$

However, the following conditions apply: First, any court-ordered support will be paid as stated. No support is required to be paid for family members currently living in government housing. However, they will be calculated in determining total number of supported family members. Lastly, any remaining family members will receive a pro rata share of the BAH-II amount regardless of the amount of support paid to other family members. Absent a court order, supported family members do not include non-biological dependents, such as stepchildren, unless they are adopted.

13. Q. IF MY SPOUSE AND I ARE SERVICEMEMBERS, WE HAVE NO CHILDREN TOGETHER, AND THERE IS NOT A COURT ORDER OR SEPARATION AGREEMENT, CAN I GET MINIMUM SUPPORT UNDER THE NEW GUIDELINES?

A. No. Any Army service member is not required to provide a minimum amount of support to a spouse on active duty in the armed services.

14. Q. IF I AM A SOLDIER AND I HAVE CUSTODY OF OUR CHILDREN AND LIVE OFF POST, WILL I RECEIVE A MINIMUM AMOUNT OF SUPPORT FOR CHILD SUPPORT FROM MY SOLDIER SPOUSE?

A. Yes. A soldier, whether or not receiving BAH based on the marriage to another soldier, will pay, at a minimum, a prorated share of his or her own BAH-II at the "with dependents" rate to the soldier having custody of the biological or adopted child(ren) of that marriage if the family is residing off post.

15. Q. WHAT IF THE CHILDREN ARE LIVING IN GOVERNMENT HOUSING (ON-POST)?

A. In the absence of a court order or written agreement to the contrary, if the children are living in government housing, no support is required.

16. Q. CAN THE AMOUNTS OF SUPPORT PROVIDED BY AR 608-99 BE INCREASED?

A. Yes. Remember these guidelines were established to ensure that some support is received for the family members while you and your spouse obtain separation agreement, court order, or judicial decree stating the proper amount of support to be paid by the soldier. Once an agreement, court order or decree is obtained, it is the controlling document.

17. Q. ARE IN-KIND PAYMENTS ACCEPTABLE FOR SUPPORT UNDER AR 608-99?

A. AR 608-99, paragraph 2-9, allows for the soldier to directly pay non-government housing expenses on behalf of family members if the family members are living in that home. Non-Government housing expenses are limited to (1) rent, (2) principal and interest payments due on any outstanding loan secured on the non-Government housing and the real property taxes and property insurance due under an escrow agreement covering the same property, and (3) essential utilities such as gas, electricity, and water. Non-Government housing expenses do NOT include telephone and cable television charges, or any other charges for which the soldier is not legally responsible by reason of contract, lease, or loan agreement. Absent a court order or written agreement to the contrary, the soldier cannot use any other bills or financial obligations, such as a car and insurance, to reduce his support obligation under AR 608-99.

18. Q. AS A SOLDIER, CAN I BE EXCUSED FROM MY REGULATORY OBLIGATIONS UNDER AR 608-99?

A. Yes, a battalion commander or a Special Court-Martial Convening Authority (usually your brigade-level commander) can excuse a soldier from this support requirement under extremely limited circumstances. Before excusing a soldier from his requirement, the commander's legal advisor must first review the action. Some bases for excusal of a soldier's support requirement may be that (1) the soldier has supported the spouse for 18 months after separation (but note that this provision for excusal does not apply to child support), (2) the income of the spouse exceeds the income of the soldier, (3) the soldier is a victim of substantiated spouse abuse, (4) the spouse is incarcerated, (5) a court issued an order without jurisdiction to do so, (6) a court order does not require financial support, or (7) the child(ren) resides with someone who is not the lawful custodian. Any excusal from support requirements under AR 608-99 does not excuse a soldier from following valid court orders.

19. Q. WHAT IF I HAVE OTHER QUESTIONS OR SPECIFIC PROBLEMS I WANT HELP IN SOLVING?

A. Please consult a legal assistance attorney or private attorney of your choice as soon as possible. Your lawyer can answer the many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. The XVIII Airborne Corps and Fort Bragg Legal Assistance Office stands by to help you in these matters. Our legal assistance office numbers are (910) 396-6113/0396. Family law matters such as support under AR 608-99 are seen on a walk-in basis on Thursdays. Prior to seeing an attorney, you must attend a briefing held at 0730 or 1300 hours. Only one of the parties may

be seen by our office. The other spouse must go to the 82d Airborne Division Legal Assistance Office (432-0195) for assistance.

A representative from the North Carolina Child Support Enforcement Division is available at the XVIII Airborne Corps and Fort Bragg Legal Assistance Office on most Thursdays who can advise and assist in seeking or modifying court-ordered child support and in paternity-related matters.

For more information, our website is at www.bragg.army.mil/SJA/lao.htm.

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The TAKE-1 series of client handouts is a project of the North Carolina State Bar's Standing Committee on Legal Assistance for Military Personnel. For comments or corrections, contact Committee member Mark E. Sullivan at: LAW8507@AOL.COM, or at 600 Wade Avenue, Raleigh, NC 27605 [919-832-8507]